

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. ) No. 05-CR-10037-GAO-4  
JOSE RUVALCABA, )  
Defendant. )

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT COURT JUDGE  
MOTION HEARING BY TELEPHONE

John Joseph Moakley United States Courthouse  
One Courthouse Way  
Boston, Massachusetts 02210

September 2, 2020  
3:07 p.m.

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1 P R O C E E D I N G S

2 THE CLERK: We're here on a motion hearing on Jose  
3 Ruvalcaba, which is 05-10037.

4 THE COURT: Good afternoon, counsel. This is Judge  
5 O'Toole. Good afternoon, Mr. Ruvalcaba.

6 THE DEFENDANT: Hello.

7 THE COURT: We'll have argument on -- there are five  
8 pending motions, three of which are pro se motions that are  
9 really repeats of prior efforts and relief, but the recent  
10 motions are 507 and 512, motions filed on Mr. Ruvalcaba's  
11 behalf by Mr. Sample. So I'll hear your argument as to those  
12 matters.

13 Do you want to go ahead, Mr. Sample?

14 MR. SAMPLE: Thank you, Your Honor. As we indicated  
15 in our filing, Your Honor, Mr. Ruvalcaba has moved the court to  
16 exercise its authority under 18 U.S.C. 3582 and grant him  
17 compassionate release. Mr. Ruvalcaba was sentenced at a time  
18 when the court was required to impose a mandatory life sentence  
19 as a result of the government's filing of a 21 U.S.C. 851  
20 information notice in the case.

21 The law has since changed. As a result of the First  
22 Step Act, other courts have recognized the changes that have  
23 been brought about by the First Step Act as applied to 924(c),  
24 and I believe most recently a court in Iowa has also extended  
25 that same kind of rationale to apply to affording relief to a

1 defendant who was sentenced like Mr. Ruvalcaba to a mandatory  
2 life sentence, a sentence that he would not be subject to  
3 today; and, Your Honor, we believe that the balance of the  
4 factors, when you consider 1B1.13, first, we believe that the  
5 court has the discretion to be able to decide what constitutes  
6 extraordinary and compelling circumstances. We believe that  
7 the change in the law, combined with Mr. Ruvalcaba's  
8 rehabilitation, his efforts to improve himself since he's been  
9 incarcerated, do constitute extraordinary and compelling  
10 circumstances to revisit the sentence in this case.

11 Also, we would note that Mr. Ruvalcaba has a history  
12 of medical issues. There does remain a serious present threat  
13 to his health, and we believe, Your Honor, that on balance that  
14 the 3553 factors also weigh in support of the court exercising  
15 its discretion to reduce Mr. Ruvalcaba's sentence.

16 We ultimately would merely ask the court to reduce the  
17 sentence to a term of imprisonment that it believes is  
18 appropriate, and we don't request a particular term. We do  
19 note that Mr. Ruvalcaba has been incarcerated for a significant  
20 period of time already, and that he should be afforded the  
21 opportunity to rejoin society at some point.

22 There have been some other facts that I believe that  
23 the court would want to know. Mr. Ruvalcaba had a very tragic  
24 loss of his daughter last year due to a drug overdose, and, you  
25 know, this kind of -- I think further has reinforced his

1 personal commitment to change in his life. He has remarked to  
2 me that he hopes that some day that he would have the  
3 opportunity to visit her graveside, and as things currently  
4 stand that's not something that's going to happen.

5 So based on that, Your Honor, and the filings that we  
6 previously submitted, I won't belabor further, and we would  
7 merely ask the court to grant Mr. Ruvalcaba a sentence  
8 reduction.

9 THE COURT: I'm sorry. I was on mute. I'm sorry.

10 The second motion, 512, added to the first the ground  
11 of the COVID virus present to some degree in the institution.  
12 Do you want to address that further, or do you rest on the  
13 papers with respect to that?

14 MR. SAMPLE: On the filing, Your Honor.

15 THE COURT: Okay. Ms. Zacks.

16 MS. ZACKS: Thank you, Your Honor. The government  
17 opposes the motion for compassionate release. I guess the  
18 first thing that I would do is draw a distinction between the  
19 two motions, that is, the one that was filed that does not  
20 include the COVID as a justification and the one that does.

21 As to the first, the government takes the position  
22 that there is exhaustion, because Mr. Ruvalcaba filed back in  
23 December of last year, 2019, a petition with the warden. And  
24 so he exhausted his administrative remedies, because 30 days  
25 has run since the receipt of that motion.

1           As to the second motion, which includes COVID, it's  
2     the government's position that there has not been exhaustion.  
3     Now, I freely acknowledge that it's also complicated, and the  
4     government further takes the position that the court does not  
5     have to address this issue because the case could be decided  
6     solely on the merits, but I just want to lay out the  
7     government's position on exhaustion here.

8           As the court knows, there's a requirement in the  
9     statute that the defendant has to exhaust administrative  
10    remedies is one way, or 30 days has to elapse from the receipt  
11    by the warden of the request by the defendant.

12          Now here, as I mentioned, a request was submitted to  
13    the warden. However, because of when it was submitted,  
14    understandably, in December, it did not mention COVID. Now,  
15    unless, which would be a factor that I'm not aware of and I did  
16    not see it in the file, the defendant has submitted a  
17    subsequent request that does reference COVID, it would be the  
18    position of the government that as to that particular aspect,  
19    administrative remedies have not been exhausted, and the policy  
20    underlying that is pretty evident. You want to give the Bureau  
21    of Prisons the first chance to consider these kind of -- the  
22    full facts, especially since the Bureau of Prisons is tasked  
23    with sort of balancing the different fact issues and the safety  
24    of the inmates, the safety of the public, various interests in  
25    rehabilitation, punishment. So they should have the chance to

1 consider it before it comes to the court, as the statute  
2 requires.

3 But I do recognize that this is an issue that has  
4 split the courts. Certain courts have taken the position that  
5 this exhaustion requirement is jurisdictional. Certain courts  
6 have taken the position that it's not. Similarly, some courts  
7 have said that a prior petition that mentions a general health  
8 issue but doesn't mention COVID is not sufficient to trigger  
9 the petition -- exhaustion requirement. Others have found that  
10 it is. And it's our position that the court doesn't have to  
11 reach this issue because the merits of this case are absolutely  
12 clear. But just to be, you know -- to sort of -- full  
13 disclosure, I want to flag the issue for the court and state  
14 more fully the government's position.

15 As to the merits, I think that the standard is clear.  
16 The defendant would have to show extraordinary compelling  
17 reasons. The court then would have to consider the standard  
18 sentencing factors contained in 3553(a) as well as whether the  
19 defendant is a danger to the community.

20 Sort of walking through this sort of step by step, the  
21 government has conceded, acknowledged in many cases where the  
22 defendant has the medical condition that meets the requirement  
23 that's set out in the CDC website where the defendant -- people  
24 who have that condition are at increased risk of complications  
25 from COVID, that that could satisfy the extraordinary and

1 compelling reasons prong.

2 Here, however, based on the facts, and as we said in  
3 our brief, it's very unclear to me that the defendant, who  
4 obviously has had medical issues, the theoretical conditions in  
5 the past will meet that requirement. The first is the CDC  
6 website says that people with certain conditions are at  
7 increased risk. Sort of the CDC website breaks it down into  
8 different categories of people. And people with the condition  
9 of serious heart conditions are at extreme risk.

10 Now, it's clear that in the past the defendant did  
11 have a very severe heart condition. However, it's ambiguous  
12 whether that history of heart condition, to what extent it's  
13 persisting into the future and qualifies as a serious heart  
14 condition. My understanding, based on the medical records, is  
15 that the defendant's pacemaker was removed in 2014 because his  
16 heart condition had improved, and that his most recent tests,  
17 sonogram, showed that his heart function was in the low normal  
18 range. So for that reason I think that it's not clear that  
19 his medical conditions qualify under the standard.

20 He's also alleged hypertension, which I think there's  
21 similarly evidence for in his medical records. Hypertension is  
22 a different category of risk under the CDC website. Those  
23 defendants, rather than are at increased risk, the CDC website  
24 qualifies them as might be at increased risk. So, in other  
25 words, it's sort of a much lesser condition and less -- puts



1 him at less risk, and makes it harder for him to reach that  
2 high threshold of an extraordinary and compelling reason.

3 I will note that the facility where he's been moved  
4 to, Butner Medium 1, at one point, as my brother counsel aptly  
5 pointed out, did have a fairly serious outbreak of COVID.  
6 However, I checked the site this morning, and it looks to me  
7 like currently the number, at least according to the BOP  
8 website, the number of inmates currently testing positive are  
9 three inmates. So I think that the facility itself -- and I  
10 will note that it has a number of -- a fairly large number,  
11 almost 200 inmates who have recovered from COVID. So there is  
12 evidence that there was at one point a more extensive outbreak,  
13 but now it seems the facility has, perhaps due to the extensive  
14 safety protocols, other measures that BOP has been taking, many  
15 of which are outlined in our filing, have gotten the situation  
16 under control so this does not appear to put the defendant at  
17 extreme risk or risk, frankly, based on the numbers -- just  
18 purely on the numbers from the BOP website seems to be  
19 pretty -- fairly low.

20 The other factors that, you know, the court would  
21 consider are the standard sentencing factors contained in  
22 3553(a), and those I think weigh against granting this motion.  
23 For one thing, I think looking -- why did the defendant receive  
24 a life sentence? One thing, it was a very serious crime. It  
25 was a large scale methamphetamine distribution organization

1 combined with a serious and sophisticated money laundering  
2 operation. The defendant was found to be in possession or to  
3 have in his room in the residence where he was staying multiple  
4 firearms, at least one of which was loaded and I think one of  
5 which was stolen. The defendant was found to be a leader of  
6 the organization, and as I mentioned the money laundering was  
7 sophisticated. All these things go to sort of the nature of  
8 the crime, the seriousness of the crime, the danger to the  
9 public, which is another factor that the court should consider  
10 and weigh against granting the motion.

11 And the last thing that I would say is this: Although  
12 it is true that the standards under the First Step Act for  
13 evaluating what qualifies as a predicate to give you an  
14 enhancement, which in his case enhancement to a mandatory life  
15 sentence, have changed, it's clear from the First Step Act that  
16 those changes in that are not retroactive, while other  
17 portions, of course, of the First Step Act are, and that  
18 Congress was clearly completely able to make portions of the  
19 First Step Act retroactive. The fact they chose not to make  
20 this particular portion retroactive suggests that this court  
21 should not import that retroactivity into this section of the  
22 Act.

23 For those reasons the government opposes the pending  
24 motions.

25 THE COURT: All right. Mr. Sample, do you want to

1 respond?

2 MR. SAMPLE: Your Honor, yes, just a few points.

3 On the issue of exhaustion, I believe that the bulk of  
4 the courts that have taken up that issue is that there's no  
5 necessity for defendant to renew a request for exhaustion on  
6 another point that might also support the court granting  
7 compassionate release, that really to satisfy the requirements  
8 of the statute that the defendant need only make the request to  
9 the warden, and here it is undisputed that he did that.  
10 Because the original request is properly before the court, I  
11 believe that the court can also consider the impact of COVID in  
12 deciding whether to grant the relief.

13 Mr. Ruvalcaba's health, as the government notes,  
14 previously it's been pretty bad, and it's acknowledged in our  
15 filings that his health did, in fact, improve. But as noted in  
16 our supplemental motion, his history, his medical history does  
17 continue to show that he's having problems with ejection  
18 fraction, which relates to how his heart pumps blood, and that  
19 it's well below normal limits, and the CDC's website  
20 specifically recognizes the kind of heart conditions that  
21 Mr. Ruvalcaba has a history of as being a significant risk  
22 factor for death if he is, in fact, exposed to COVID.

23 Counsel for the government is correct that the FCI  
24 Medium 1 at one point was a real hot spot for the virus in the  
25 Bureau of Prisons, and it does appear that the number of cases

1     there has dissipated, but we don't -- I will say that we don't  
2     know fully what the Bureau of Prisons is still doing with  
3     respect to testing at that facility. So the reduction in  
4     numbers is not necessarily indicative of the more limited risk  
5     of Mr. Ruvalcaba catching the virus and potentially succumbing  
6     as a result.

7             And finally, Your Honor, just to really kind of  
8     generally speak to the change in the law and the court's  
9     ability to take into account that if it was resentencing  
10    Mr. Ruvalcaba today that it would not be required to impose a  
11    mandatory life sentence, the fact that Congress in the context  
12    of the First Step Act itself decided that that provision did  
13    not have a direct remedy within the First Step Act to apply for  
14    relief does not mean that the court is thereby prohibited from  
15    exercising its broad authority under 3582(c)(1)(A). I think  
16    the courts, as we noted like in the *Marks* case, we provided  
17    that citation to the court, that granted relief for a defendant  
18    who had a series of 924(c) convictions, that the court has now  
19    been unchained in its discretion to be able to make these kinds  
20    of determinations. And I would respectfully submit, Your  
21    Honor, that if the court was sentencing Mr. Ruvalcaba today,  
22    that it's very unlikely that the court would impose the same  
23    life sentence.

24             And I think that the best representation, when we look  
25    at the history and characteristics of Mr. Ruvalcaba, you look

1 at how he has conducted himself since he's been in prison, and  
2 he has, as far as I know, Your Honor, done quite well, and he's  
3 taken a lot of programs and, you know, it's the best  
4 representation for what the court might expect if it was, in  
5 its discretion, to grant his sentence reduction.

6 Based on the arguments we've made here today and in  
7 our filings, Your Honor, we would urge the court to grant the  
8 motions and reduce Mr. Ruvalcaba's sentence as the court deems  
9 appropriate.

10 THE COURT: All right. Thank you, counsel. I  
11 appreciate it. We'll take the matter under advisement. Thank  
12 you for attending by telephone.

13 MR. SAMPLE: Thank you, Your Honor.

14 THE COURT: This concludes the hearing.

15 MS. ZACKS: Thank you.

16 (Proceedings adjourned at 3:26 p.m.)  
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## C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS )

I certify that the foregoing is a correct transcript  
from the record of proceedings taken September 2, 2020 in the  
above-entitled matter to the best of my skill and ability.

/s/ Kathleen Mullen Silva

4-11-21

Kathleen Mullen Silva, RPR, CRR  
Official Court Reporter

Date